

**§ 426.13**

**43 CFR, Subtitle B, Ch. I (10-1-03 Edition)**

(A) The landowner has an increased ownership entitlement because of becoming subject to the discretionary provisions; or

(B) Land becomes eligible by implementation of Class 1 equivalency, if the landowner amends the recordable contract prior to performance of appraisal.

(ii) Landholders must receive Reclamation's approval to amend recordable contracts.

(A) The disposition period for any land remaining under a recordable contract will not change because of an amendment to remove some land.

(B) For land removed from a recordable contract based on paragraph (j)(5)(i) of this section, any requirement for application of a deed covenant will no longer be applicable.

(6) *Sale of land by Reclamation.* If the landowner does not dispose of the excess land held under recordable contract within the period specified in the recordable contract, Reclamation will sell that land. Reclamation will not sell the land if the landowner complies with all requirements for sale of excess land under these rules within the period specified, regardless if Reclamation gives final approval of the sale within that period or after.

(7) *Delivery of water when a recordable contract has matured.* Reclamation can make available irrigation water at the current applicable rate, pursuant to paragraph (j)(4) of this section, to excess land held under a matured recordable contract until Reclamation sells the land.

(8) *Procedures Reclamation follows in selling excess land.* If Reclamation must sell excess land, the following procedures will be used:

(i) If Reclamation determines it to be necessary, a qualified surveyor will make a land survey. The United States will pay for the survey initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land;

(ii) Reclamation will appraise the value of the excess land, in the manner prescribed by § 426.13, to determine the appropriate sales price. The United States will pay for the appraisal initially, but such costs will be added to the approved sales price for the land.

The United States will be reimbursed for these costs from the sale of the land; and

(iii) Reclamation will advertise the sale of the property in farm journals and in newspapers within the county in which the land lies, and by other public notices as deemed advisable. The United States will pay for the advertisements and notices initially, but such costs will be added to the approved sales price for the land. The United States will be reimbursed for these costs from the sale of the land. The notices must state:

(A) The minimum acceptable sales price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising);

(B) That Reclamation will sell the land by auction for cash, or on terms acceptable to the landowner, to the highest eligible bidder whose bid equals or exceeds the minimum acceptable sales price; and

(C) The date of the sale (which must not exceed 90 calendar days from the date of the advertisement and notices);

(iv) The proceeds from the sale of the land will be paid:

(A) First, to the landowner in the amount of the appraised value;

(B) Second, to the United States for costs of the survey, appraisal, advertising, etc.; and

(C) Third, any remaining proceeds will be credited to the Reclamation fund or other funds as prescribed by law; and

(v) Reclamation will close the sale of the excess land when parties complete all sales arrangements. Reclamation will execute a deed conveying the land to the purchaser. Reclamation will not require the purchaser to include a covenant in the deed, as specified in paragraph (i) of this section, that restricts any further resale of the land.

**§ 426.13 Excess land appraisals.**

(a) *When does Reclamation appraise the value of a landowner's land?* Reclamation appraises excess land or land burdened by a deed covenant upon a landowner's request or when required by Reclamation. If a landowner does not request an appraisal within 6 months of

the maturity date of a recordable contract, Reclamation, in its discretion, can initiate the appraisal.

(b) *Procedures Reclamation uses to determine the sale price of excess land or land burdened by a deed covenant.* Reclamation complies with the following procedures to determine the sale price of excess land and land burdened by a deed covenant, except if a landholder owns land subject to a recordable contract that was in force on October 12, 1982, or other pertinent contract that was in force on that date, and these regulations would be inconsistent with provisions in such a contract:

(1) *Appraisals of land.* Reclamation will base all appraisals of land on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Reclamation must use standard appraisal procedures including: the income, comparable sales, and cost methods, as applicable. Reclamation will consider nonproject water supply factors as provided in paragraph (c)(1) of this section as appropriate; and

(2) *Appraisal of improvements to land.* Reclamation will assess the contributory fair market value of improvements to land, as of the date of appraisal, using standard appraisal procedures.

(c) *Appraisals of nonproject water supplies.* (1) The appraiser will consider nonproject water supply factors, where appropriate, including:

- (i) Ground water pumping lift;
- (ii) Surface water supply;
- (iii) Water quality; and
- (iv) Trends associated with paragraphs (c)(1) (i) through (iii) of this section, where appropriate.

(2) Reclamation will develop the nonproject water supply and trend information with the assistance of:

- (i) The district in which the land is located, if the district desires to participate;
  - (ii) Landowners of excess land or land burdened by a deed covenant and prospective buyers who submit information either to the district or Reclamation; and
  - (iii) Public meetings and forums, at the discretion of Reclamation.
- (3) Data submitted may include:
- (i) Historic geologic data;

(ii) Changing crops and cropping patterns; and

(iii) Other factors associated with the nonproject water supply.

(4) If Reclamation and the district cannot reach agreement on the nonproject water supply information within 60-calendar days, Reclamation will review and update the trend information as it deems necessary and make all final determinations considering the data provided by Reclamation and the district. Reclamation will provide these data to the appraisers who must consider the data in the appraisal process, and clearly explain how they used the data in the valuation of the land.

(d) *The date of the appraisal.* The date of the appraisal will be the date of last inspection by the appraiser(s) unless there is a prior signed instrument, such as an option, contract for sale, agreement for sale, etc., affecting the property. In those cases, the date of appraisal will be the date of such instrument.

(e) *Cost of appraisal.* If the appraisal is:

(1) The land's first appraisal, the United States will initially pay the costs of appraising the value of the land, but such costs will be added to the approved sale price for the land. The United States will reimburse itself for these costs from the sale of the land;

(2) Not the land's first appraisal, the landowner requesting the appraisal must pay any costs associated with the reappraisal, unless the value set by the reappraisal differs by more than 10 percent, in which case the United States will pay for the reappraisal; or

(3) Associated with a sales price reformation as specified in § 426.12(f)(1), the landowner requesting the appraisal must pay any costs associated with the appraisal.

(f) *Appraiser selection.* Reclamation will select a qualified appraiser to appraise the excess land or land burdened by a deed covenant, except as specified within paragraph (g) of this section.

(g) *Appraisal dispute resolution.* The landowner who requested the appraisal may request that the United States conduct a second appraisal of the excess land or land burdened by a deed covenant if the landowner disagrees

with the first appraisal. The second appraisal will be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. The appraisal made by the panel will fix the maximum value of the excess land and will be binding on both parties after review and approval as provided in paragraph (h) of this section.

(h) *Review of appraisals of excess land or land burdened by a deed covenant.* Reclamation will review all appraisals of excess land or land burdened by a deed covenant for:

- (1) Technical accuracy and compliance with these rules and regulations;
- (2) Applicable portions of the "Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973," as revised in 1992;
- (3) Reclamation policy; and
- (4) Any detailed instructions provided by Reclamation setting conditions applicable to an individual appraisal.

**§ 426.14 Involuntary acquisition of land.**

(a) *Definitions for purposes of this section.*

*Financial institution* means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.

*Involuntarily acquired land* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

- (1) The land becomes nonexcess in the new landowner's ownership; and
- (2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed

commences when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:

- (1) Assumes the recordable contract; and
- (2) Executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

- (i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;
- (ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and